

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 8, 2018

Thru: Bridget C. Bohac, Chief Clerk
Stephanie Bergeron Perdue, Interim Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2018-0252-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 305, Consolidated Permits
Chapter 331, Underground Injection Control
Chapter 336, Radioactive Substances Rules
TMRA-UC Petition Follow-up and Federal Cross-reference Update
Rule Project No. 2018-017-336-WS

Background and reason(s) for the rulemaking:

The Radioactive Materials Division proposes to implement a federal rule update as well as respond to a petition filed by Lloyd Gosselink on behalf of the Owner/Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA-UC) in October 2016 (Project No. 2017-005-PET-NR; approved on December 15, 2016 to initiate rulemaking). The rulemaking would modify rules in 30 Texas Administrative Code (TAC) in order to fulfill the requirements of an Agreement State program for *in-situ* uranium mining operations and also to clarify and streamline rules.

Scope of the rulemaking:

A.) Summary of what the rule will do: The rulemaking would include a correction in 30 TAC §336.1115 (Expiration and Termination of Licenses; Decommissioning of Sites, Separate Buildings or Outdoor Areas) to maintain compatibility with federal requirements in 10 Code of Federal Regulations (CFR) Part 40. The rulemaking would also include clarifying revisions to rules in 30 TAC Chapters 305 and 331 in §305.62 (Amendments), §331.84 (Monitoring Requirements), and §331.107 (Restoration).

B.) Scope required by federal regulations or state statutes: To maintain rules compatible with federal requirements in 10 CFR §40.42, the proposed rulemaking would correct a reference found in §336.1115(d)(2) to the citation for the definition of the term principal activities, as defined in §336.1105.

C.) Additional staff recommendations: The requested revisions to the commission's rules would address requirements for both injection well permitting and radioactive materials licensing for uranium mining operations, including: license amendment categories; the timing of monitor well sampling; the selection of groundwater constituents monitored during the restoration period and stability demonstration; and

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the timing of the submission of Production Area Authorization amendment applications for restoration table value revisions.

Statutory authority:

The amendments are proposed under: Texas Health and Safety Code (THSC), §401.011, which provides the commission authority to regulate and license the disposal of radioactive substances, the commercial processing and storage of radioactive substances, and the recovery and processing of source material; THSC, §401.051, which authorizes the commission to adopt rules relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.109, which requires the commission to establish the type and amount of financial assurance by rule; THSC, §401.2625, which provides the commission authority to grant licenses for source material recovery and processing, and for the storage, processing or disposal of by-product material; THSC, §401.412, which provides the commission authority to adopt rules for the recovery and processing of source material and the disposal of by-product material; Texas Water Code (TWC), §5.103, which provides the commission authority to adopt rules necessary to carry out its powers and duties under the laws of the state; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §27.019, which provides the commission authority to adopt rules required for the performance of commission responsibilities under the Injection Well Act; and TWC, §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations.

Effect on the:

A) Regulated community:

Licensees will be affected. Regulatory costs and time requirements will be reduced for amendments related to completed closure activities, by reducing the requirement to consider those amendments as a major amendment to instead consider as a minor amendment. Regulatory complexity will be reduced by clarifying timing and reporting requirements related to restoration table amendments and demonstrating that restoration has occurred.

B) Public:

There is no direct impact to the public anticipated with this rulemaking.

C) Agency programs:

There is no direct impact to other agency programs with this rulemaking.

Stakeholder meetings:

A stakeholder meeting is not scheduled for this rulemaking; however, a public hearing will be held during the rulemaking public comment period.

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Potential controversial concerns and legislative interest:

No controversial concerns or legislative interest have been identified.

Will this rulemaking affect any current policies or require development of new policies?

No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The commission could delay correcting §336.1115 until a subsequent rulemaking when adopting other federal compatibility requirements. The commission could also decide not to propose any of the other rulemaking provisions because current agency rules do allow for *in-situ* mining operations while requiring adequate protections for human health and the environment. However, staff recommended changes are proposed to clarify and streamline current requirements, which would address several of the requested changes included in the October 28, 2016 TMRA-UC petition.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: June 27, 2018

Anticipated *Texas Register* publication date: July 13, 2018

Anticipated public hearing date (if any): August 9, 2018

Anticipated public comment period: July 13, 2018 - August 13, 2018

Anticipated adoption date: November 14, 2018

Agency contacts:

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Attachments:

TMRA-UC Petition

Petition Order

cc: Chief Clerk, 2 copies
Executive Director's Office
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Dennise Braeutigam
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